

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **VICE CHAIRMAN DALE MAHLUM**, on February 17, 1999 at 3:10 P.M., in Room 405 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. William Crismore, Chairman (R)  
Sen. Dale Mahlum, Vice Chairman (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Mack Cole (R)  
Sen. Lorents Grosfield (R)  
Sen. Tom Keating (R)  
Sen. Bea McCarthy (D)  
Sen. Ken Miller (R)  
Sen. Glenn Roush (D)  
Sen. Mike Taylor (R)  
Sen. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Larry Mitchell, Legislative Branch  
Jyl Scheel, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 411, 2/15/1999; SB 465,  
2/15/1999; SB 468, 2/15/1999  
Executive Action: SB 343; SB 344; SB 345; SB  
376; SB 265; SB 468

#### **HEARING ON SB 411**

**Sponsor:** SENATOR WILLIAM CRISMORE, SD 41, LIBBY

Proponents:

Cary Hegreberg, Montana Wood Products Association  
REPRESENTATIVE DOUG MOOD, HD 58, SEELEY LAKE  
Loren Rose, Seeley Lake Elementary School  
Patrick Heffernan, Montana Logging Association

Opponents:

Joe Lamson, Representing Nancy Keenan, Office of Public  
Instruction and Member of State Land Board  
Dave Whyte, Chief Legal Council for Mike Cooney  
Tary Mocabee, Friends of the Wild Swan

Opening Statement by Sponsor:

SENATOR WILLIAM CRISMORE, SD 41, LIBBY, presented SB 411 as per  
**EXHIBIT**(nas39a01) and **EXHIBIT**(nas39a02).

Proponents' Testimony:

Cary Hegreberg, Montana Wood Products Association, spoke in  
support of SB 411. He provided handouts for the committee's  
review during his testimony as per **EXHIBIT**(nas39a03).

During testimony for SB 48, DNRC Director Bud Clinch gave an  
excellent overview of trust land management. He referenced  
several court decisions which have consistently upheld the  
concept of State Lands being held in trust for specific  
beneficiary institutions and common schools.

This bill enhances the tools the DNRC staff has to work with in  
administering this trust by giving the actual trustees, the Board  
of Land Commissioners, some legislative direction. He referred  
to his handout regarding the *Department of State Lands v.*  
*Pettibone* case. He also referred to a Washington state case,  
*County of Skamania v. State*, where the court stated, "A trustee  
must act with undivided loyalty to the trust beneficiaries, to  
the exclusion of all other interests." That is exactly what  
SB 411 does. It assures the Montana Board of Land Commissioners  
act with undivided loyalty to the trust beneficiaries by  
providing those beneficiaries with a simple report. Have the  
forest trust land assets earned an acceptable rate of return or  
have they not? If not, what will be done to improve the return  
to an acceptable level?

The last two pages of the handout illustrate the intent of the  
bill showing a breakdown of forest acreage assigned to specific

trust beneficiaries and state trust lands adjacent to Beaver Lake near White Fish.

The companies Montana Wood Products Association represent have an obvious vested interest in this issue. They think long term sustainable timber management is a good alternative to provide a reasonable rate of return for trust beneficiaries. It is not acceptable to continue management without benchmarks for accountability.

**REPRESENTATIVE DOUG MOOD, HD 58, SEELEY LAKE**, read a letter of support from John Hebnes, Superintendent of Seeley Lake Elementary School as per **EXHIBIT (nas39a04)**.

**Rep. Mood** stated he was the partial owner and one of the managers of a lumber company in Seeley Lake, MT. 10-12 years ago they processed about 80% agency timber, i.e. Forest Service, State Trust Lands and BLM, in their facility. They processed about 20% from private lands. They spent \$7 million on raw materials ten years ago within a 50 mile radius of Seeley Lake. This past year they processed 15% - 17% agency timber within a 250 mile radius. That \$7 million they used to spend on raw materials in Seeley Lake is now being disbursed across a 250 mile radius area. That is a direct result of some of the things that have happened with the Forest Service Timber Sale program and are now happening with the State Timber Sale program in their area.

The beneficiaries of the trust have a right to know what is happening to their trust and to the returns from the trust. He urged support of the bill.

**Loren Rose, Seeley Lake Elementary School**, spoke in support of the bill as per **EXHIBIT (nas39a05)**.

**Patrick Heffernan, Montana Logging Association**, spoke in support of the bill as per **EXHIBIT (nas39a06)**.

*{Tape : 1; Side : A; Approx. Time Counter : 0 - 30.6; Comments : None.}*

**Opponents' Testimony:**

**Joe Lamson, Representing Nancy Keenan, Office of Public Instruction and Member of Land Board**, assured the committee all five members of the Land Board take their fiduciary responsibilities very seriously. As trustees of these state

lands they are managing these lands for multiple use. They could support the accountability segments of this legislation. Their problem is with the requirement that the management of their annual cuts somehow meet the return on the total portfolio of the trust lands. The market has been poor for timber. Who would have thought Montana timber would be competing with timber from the Soviet Block countries. That is a function of the collapse of the Asian market. They are having trouble competing because of transportation costs with getting Montana timber to the East Coast. Even though an additional 40 million board feet was sold last year, there is 60 million board feet that is under contract currently and not being harvested mainly for market reasons. They believe the current Department of State Lands is doing an excellent job managing the forestry reserves. Their fiduciary responsibility is not only to the current beneficiaries but also to the long term beneficiaries of the trust.

**Dave Whyte, Chief Legal Council for Mike Cooney,** stated

**Mr. Cooney** was also one of the five members on the land board. He mirrors several of the comments made by **Mr. Lamson**. He believes there has been some misrepresentation of what the trust requirements are of the Land Board. Income producing is a main reason for having the trust and that income should go to the beneficiary. Timber sales, generally speaking, are not controversial because of the rate of return that is reported. They are controversial because of other issues, i.e. environmental, old growth, rate of return on a particular sale, and Montana Environmental Protection Act requirements. He feels the case law previously stated regarding fiduciary duty of the board was oversimplified. The land board is saddled with more than just whether it produces income, they have many other things to consider.

**{Tape : 1; Side : A; Approx. Time Counter : 30.6 - 43; Comments : None}**

**Tary Mocabee, Friends of the Wild Swan,** stated she concurred with **Mr. Whyte**. According to information she has there is currently a 9.8% return on bonds. That is obviously quite high but the timber market is in the basement. With the Asian contagion she feels if this formula goes through and is enacted upon it will increase the cut during bad markets. The biggest source of funds for schools is the tax base and if the other trust assets are not valued that provide a valuable tax base, i.e. wildlife, good water, and recreation, there will be no tax base.

**Questions from Committee Members and Responses:**

**SENATOR MAHLUM** questioned if there was a problem finding timber in the area? **REP. MOOD** stated the reason they have to go so far is the amount of procedural laws on the books at the federal level and now at the state level are forcing them to go through hoops to the point it is grinding the whole program down. They have been forced off agency land and onto private lands in order to find a resource to keep their operation running and their 125 employees working.

**SENATOR MAHLUM** said with 125 employees, are you one of the largest employers in your area? **REP. MOOD** stated they are the largest employer in the Seeley Swan valley and the fourth largest private employee in Missoula County.

*{Tape : 1; Side : B; Approx. Time Counter : 0 - 4.1; Comments : None.}*

**Closing by Sponsor:**

**SENATOR WILLIAM CRISMORE, SD 41, LIBBY,** commented on **Mr. Lamson's** remarks. What is the return on the asset value? If not timber, then what are they looking to do elsewhere. There are a lot of things that can be done with that land to make money. The multiple use concept is fine but let all the uses help give the school some money. This bill is a good opportunity for the state to help balance the budget and finance the state.

*{Tape : 1; Side : B; Approx. Time Counter : 4.1 - 6.7; Comments : None.}*

**HEARING ON SB 468**

**Sponsor: SENATOR VICKI COCCHIARELLA, SD32, MISSOULA**

**Proponents:**

**Bud Clinch, Director, Department of Natural Resources and  
Conservation**

**Neal Colwell, Avista Corporation**

**Art Compton, Department of Environmental Quality**

**Bob Lane, Legal Counsel for Pat Graham, Montana Fish, Wildlife  
& Parks**

**Mike Murphy, Montana Water Resources Association**  
**Holly Franz, Montana Power Co.**  
**Jerry Wells, Montana Council Trout Unlimited**  
**John Munding, Montana Stockgrowers Association**

**Opponents:** - None

**Opening Statement by Sponsor:**

**SENATOR VICKI COCCHIARELLA, SD32, MISSOULA,** stated **SB 468** asks for a "temporary" closure of the Clark Fork River Basin to further appropriations and reservations for consumptive uses, except for ground water, domestic, municipal, and emergency appropriations. She also asked that the bill be amended to add stockwater to the list of appropriations. The parties involved reached the point of signing the agreement for reauthorization but could not agree on the issue of water rights. It is agreed among the proponents a temporary closure is in order to finalize the agreement to protect the water rights of Montana and to allow Avista to have some consideration of the rights they currently hold.

*{Tape : 1; Side : B; Approx. Time Counter : 6.7 - 8.8; Comments : None.}*

**Proponents' Testimony:**

**Bud Clinch, Director, Department of Natural Resources and Conservation,** spoke in support of the bill as per **EXHIBIT(nas39a07), EXHIBIT(nas39a08) and EXHIBIT(nas39a09).**

**Neal Colwell, Avista Corporation,** spoke in support of the bill. He felt **Mr. Clinch** framed the issues very well as to why the bill is before the committee and why action needs to be taken. They also support the amendment for stockwater to be exempt. They are trying to keep the pool of potential water right holders from expanding in the next couple of years. They have participated, over the past 10-12 years, in various forums throughout the basin to work out problems with competing water rights. They initiated and participated in the Upper Clark Fork Basin steering committee which eventually concluded their work first with a moratorium and then a closure for the Upper Clark Fork Basin so the basin did not become further over allocated. They hope this gives them a few years to work out the problems and bring a favorable conclusion for all water rights holders in the Clark Fork Basin. They urge the committee's approval of the bill.

**Art Compton, Department of Environmental Quality,** said **DEQ** administers the Montana Major Facility Citing Act which addresses

the relicensing of hydro-facilities such as Avista Corp's Noxon and Cabinet Gorge Reservoirs. These facilities also fall under **Federal Energy Regulatory Commission (FERC)** jurisdiction who actually issues the new license. This settlement agreement is a new way of going about **FERC** relicensing. It is a collaborative approach where all the stakeholders are brought together to come up with a package of mitigations and stipulating measures for the **FERC** license that all parties agree upon. It was a fairly high profile effort as it was the first **FERC** relicensing effort to go through this collaborative process. The finalization of that settlement agreement hinged upon reaching some basic understandings on the water rights issue. Avista Corp. made a fairly major concession in essentially surrendering their water right by agreeing not to make a call on the river for a period of two years. The state's part of the bargain was to seek this temporary closure. All parties committed to work together over the next two years to balance the needs of those 6,000+ junior users with the senior water rights of this department. They encourage the committee's support of **SB 468**.

**Bob Lane, Chief Legal Counsel representing Pat Graham, Montana Fish, Wildlife & Parks**, spoke in support of the bill as per **EXHIBIT**(nas39a10) .

**Mike Murphy, Montana Water Resources Association**, feels this is an appropriate action for all the previous reasons. They appreciate stockwater being amended into the bill as that was a concern of theirs. They urge the committee's support of the bill.

**Holly Franz, Montana Power Co.**, said Montana Power Company also has some water rights there. This subject was brought up when the hydroelectric dams were put up for bid. Avista has basically agreed to give up their right to make a call on their water rights for two years which is a valuable thing. The most important part of a water right is the priority date. In return the closure is for two years to allow this agreement to be worked out. They urge the committee's support.

**Jerry Wells, Montana Council Trout Unlimited**, stated Trout Unlimited had been intimately involved in the relicensing procedure on the Clark Fork. They agree with the comments of the other proponents of **SB 468**. They commend Avista for being so forthcoming and willing to address fisheries issues in the drainage as well as putting resources toward restoring certain populations of fish.

**John Mundinger, Montana Stockgrowers Association**, stated their support of **SB 468**.

**{Tape : 1; Side : B; Approx. Time Counter : 8.8 - 24.7; Comments : None.}**

**Questions from Committee Members and Responses:**

**SENATOR MCCARTHY** referred to page 3 of **Mr. Clinch's** testimony. Who would he consider the affected party? **Mr. Clinch** stated **EXHIBIT (9)** listed the Montana negotiating team appointed by the Governor.

**SENATOR COLE** asked what they hoped would be accomplished in this two years that had not been accomplished in the past? **Mr. Clinch** said he anticipated they would look at some hard facts associated with the operation of the river and of those two dam facilities. They need to analyze the phlegmatic application of moving water through the river. **SEN. COLE** then stated he was curious what had happened in the past and why all of a sudden a closure was necessary? **Mr. Clinch** stated they had probably tried to have these negotiations in the past and they had not really moved forth. It is all tied to the settlement agreement and the relicensing of the two hydro projects.

**Closing by Sponsor:**

**SENATOR VICKI COCCHIARELLA, SD 32, MISSOULA**, stated her father had been the citizen representative involved in this process. She encouraged the committee to visit the site rather than read **Mr. Clinch's** research report. She encouraged a DO PASS.

**{Tape : 1; Side : B; Approx. Time Counter : 24.7 - 30.4; Comments : None.}**

**HEARING ON SB 465**

**Sponsor:** **SENATOR GREG JERGESON, SD 46, CHINOOK**

**Proponents:** None.

**Opponents:** None.

**Opening Statement by Sponsor:**

**SENATOR GREG JERGESON, SD 46, CHINOOK**, stated this was his widows and orphans bill for this session. This problem confronted a couple of his constituents relating to the underground storage tank issue under contention for years. A widow in Havre has underground storage tanks on her property. She would like to get

it cleaned up so she can dispose of the property. She has been struggling with the Department to get this taken care of and is worried about financial exposure that could be quite burdensome to her. The other case is a father and son team who no longer sell gasoline products and have an underground storage tank on their property. Due to retirement of the father and the ill health of the son, they are concerned the cost of cleanup and complying with the law may bankrupt them. In trying to find a way to help his constituents, he considered if there would be a way to get the property cleaned up and sell to someone else without having the liability that would bankrupt them. He realizes the language of the bill needs some work. He will work with the committee on amendments to further the bill along.

**{Tape : 1; Side : B; Approx. Time Counter : 30.4 - 35; Comments : None.}**

**Informational Testimony:**

**Denise Mills, Remediation Division Administrator, Department of Environmental Quality speaking for Mark Simonich, Director, DEQ, and Member of the Petroleum Tank Compensation Release Board,** stated the Board directed **Mr. Simonich** to speak as an informational witness and to offer some comments and possible amendments the Board believed would improve the bill. The first concern, on page 1, line 14 of the bill, appears to allow tank systems and owners of systems to be eligible. They are currently specifically prohibited from eligibility for reimbursement through the Petroleum Tank Release Cleanup Act. The specific word that causes them concern is "or" found on line 14 after the word sections. Another concern is the provision contained within Section 1, page 3, line 18. This an amendment that would be difficult to implement from the Board's standpoint. Although other legislation is pending that creates the authority for environmental covenants, this would be a cumbersome process to establish covenants for these sites.

The Board would like to work on language with the sponsor that would essentially cover tanks that were put into temporary closure by December 22, 1998. Those tanks and the owners of those tanks are still eligible for reimbursement because they are in compliance with the law and as long as they complete their closures or upgrades by December 22, 1999, they might receive reimbursement pending no other violations at those facilities.

They also understand the bill sponsor was intending that additional reduced co-payment incentive be available for certain mom and pop facilities. Some of those facilities might be otherwise severely disadvantaged economically due to the recent

federal deadline. They recognize that as a problem for many of the tankowners.

Unfortunately, this bill as currently drafted, is much broader than they believe was intended by the sponsor. The reduced co-payment incentive could introduce unforeseen impacts to the town. They are willing to work with the sponsor on language to narrow the scope of that reduced co-payment incentive. There are also individual spots in the bill language that need some cleanup and they would be happy to help with that also.

**{Tape : 2; Side : A; Approx. Time Counter : 0 - 4; Comments : None.}**

**Questions from Committee Members and Responses:**

**SENATOR WILSON** asked what were the consequences if the tanks remained in the ground after December 22, 1999? What kind of jeopardy are they in right now? **Ms. Mills** stated several underground tank owners put their tanks in temporary closure meaning they can take their tank off line and discontinue use of it. They still have to continue certain operation and maintenance requirements to stay in compliance but those owners have time to put their tanks out of use permanently by the end of this year or to complete upgrades they did not get a chance to finish last year. Those owners are still in compliance and do not have any risk of penalty unless they do not follow the operation and maintenance requirements. **SEN. WILSON** asked if they have found contamination in what has been dug up so far? **Ms. Mills** stated history has shown between 30-40% of the tanks that were closed or upgraded had leaks. At some sites the contamination is worse than others due to soil conditions and groundwater conditions.

**SEN. WILSON** asked if there were figures as to what had been reimbursed? **Jean Riley, Executive Director, Petroleum Tank Release Compensation Board**, stated they had paid the maximum of \$982,500 out on sites. Typically the sites where the maximum has been paid involve third party damages. The average reimbursement to date is about \$34,000.

**SEN. WILSON** said this bill proposes to give more financial relief? **SEN. JERGESON** stated if they were in compliance it would limit their liability to \$5,000 instead of \$17,500.

**SENATOR MILLER** stated his concern with the bill was a new precedence being set for these people than the ones subject to the \$17,500. How does one respond to those people? **SEN. JERGESON** stated there were currently some farmers with a minimum

of \$5,000 liability so this would be consistent with them. He did not want to completely eliminate these people having liability as there may have been the procrastination factor with some and they should not be completely let off the hook.

**SENATOR TAYLOR** asked if he concurred with the amendments? **SEN. JERGESON** said he thought he could concur with those amendments but others may also need to be drafted so there isn't someone with tanks on their property who say they will take advantage of this bill and close down that property and operate someplace else. This is only for someone with a single property who will never use it for that purpose.

*{Tape : 2; Side : A; Approx. Time Counter : 4 - 9.4; Comments : None.}*

**Closing by Sponsor:**

**SENATOR GREG JERGESON, SD 46, CHINOOK**, stated he would agree with the amendments unless there was another bill that would work better to accomplish this goal. He is interested in keeping the bill alive to see what can be worked out over the course of the session. This is a problem that needs to be addressed.

*{Tape : 2; Side : A; Approx. Time Counter : 9.4 - 10.8; Comments : None.}*

**EXECUTIVE ACTION ON SB 344**

**Motion:** **SEN. KEATING** moved that **SB 344 DO PASS.**

**Motion:** **SEN. MILLER** moved that **AMENDMENTS SB034401.ALM DO PASS.**  
**EXHIBIT (nas39a11)**

**Discussion:**

**SENATOR MILLER** stated the purpose of the amendments is to put the repealer on the ballot at the next General Election in November, 2000. Instead of repealing it and then putting it back on the ballot this puts it on the ballot and leaves it in law like the voters of the state voiced when they passed I-137. He felt it was legitimate that it was an unfair election. This would allow it to be run again under the same laws for everyone and both sides can then promote their ideas and be finalized once and for all.

**SENATOR KEATING** questioned if this suspended I-137 for two years while waiting for this to be voted on? **SEN. MILLER** stated no it does not.

**SENATOR TAYLOR** stated the mining industry could get another initiative on the ballot on their own and this allows them not to have to do that process. **SEN. MILLER** stated yes, that was basically the case.

**SENATOR KEATING** stated actually **SB 343** is a referendum to do the very thing **SEN. MILLER** is proposing with this amendment. The only difference is this amendment does not suspend I-137 and that shuts down the mining industry for two years. Many of those people have a lot of money invested that is going to sit there foul which is expensive for them plus is a real deterrent for anyone else that wants to do anything. It makes it look like Montana is a terribly unfriendly place and still creates havoc in the industry. **SEN. MILLER** stated that was correct. His first try at this was to only pass **SB 343** and put it to the vote of the people and not pass **SB 344**. That is not possible the way they are written. That puts it on the ballot to ban cyanide after we have repealed it so by just putting a referendum on the repealer almost the same thing can be accomplished.

**SENATOR GROSFIELD** appreciates what **SEN. MILLER** is doing and it does present one approach to this. The question really is the one **SEN. KEATING** raised which is should the results of an unfair election be left in place for two years or not? That is the crux of what is being done. If this amendment and this bill were to pass, **SB 343** would be tabled because it becomes a mute issue. He is very frustrated by the use of the initiative process as it has come to be used in Montana in a variety of issues, this is one of them.

We are reduced to sound byte policy decision making and that is not a good way to make public policy. Because of the way the media works, it comes down to whom has the best sound byte which disallows good technical information to answer a question well. Policy should be made in an open forum where people can come, proponents and opponents, and say where they feel there are problematic areas of a bill and then it be amended, etc. That is the appropriate way to make policy on technical issues rather than the initiative process.

**SENATOR WILSON** echoed the sentiments of **SEN. GROSFIELD** and stated his frustration with initiative process. It ties the legislators in knots as they go through their deliberations and try to make sense of the mess that it has created whether it be terms limits, CI-75 or the cyanide initiative. Anytime anything like this

appears on the ballot, it is very seductive and looks good. He does not believe people go to vote with the vast majority really picking apart these issues and giving them careful thought. The only way to truly challenge any of this is to get it in front of the courts because that is the next step. He feels it is wrong to come here and repeal what the people wanted done and therefore he opposes the amendment.

**SENATOR COCCHIALLA** stated she agreed with **SENATOR WILSON** but also disagreed with him. She feels the legislators come here every other year and it is their job to represent the citizens of this state in making good decisions and representing their constituents. What she sees happening in the initiative process is it takes her out of being a statesman by having to go back to her district to look at the voting record and counting votes. This causes her conflict because she believes it is eroding the citizens branch of government, taking away the representatives right to deal with and address these issues in the time and manner **SEN. GROSFIELD** talked about. Her constituents did vote for I-137 and she will vote with her constituents.

It also causes her conflict when it is suggested to go to the Supreme Court. They are also eroding the citizens branch of government by making decisions for us. She feels the citizens need to decide if they want a Constitutional Convention to change this and not call them back any more or do they want to have representative government? Do they want to have every vote made by all the people and then take everything to court? That is where this process is headed.

**Vote:** Motion that **AMENDMENTS SB034401.ALM DO PASS failed 1-10.**  
by Roll Call Vote with **SEN. MILLER VOTING YES.**

**Discussion:**

**SENATOR TAYLOR** stated it was a shame we are being put in this position today. Most of the mining community are our friends, neighbors and good stewards of the land. They keep their bank accounts here and their corporate records and corporations here. Unfortunately there are a few out of state multi-national corporations that have not been good stewards of the land nor fulfilled their obligations to the people of Montana. He believes that is the reason I-137 was on the ballot and why it passed. He does not think it had anything to do with cyanide. He plans to vote no on these bills because he has to represent the people who sent him here although he does not necessarily agree with it. His district voted 68% against the use of cyanide. If these bills do pass out of this committee, he hopes the out of state corporations take this to heart and become

better stewards. There are good reasons to have mining and there are good reasons not to lose these jobs.

**SENATOR COLE** stated he has a little different viewpoint than **SEN. TAYLOR** as he looks at this bill. In the many, many comments heard at the hearing we heard everything except the word cyanide used. They talked about destroying the ground, destroying this and that but were we talking about that or cyanide? As he looked back at his constituents vote, they did not vote for banning cyanide. He feels they took a good look at it and for those reasons he has no problem voting for these bills. He feels it is the right thing to do.

**SENATOR MAHLUM** stated about a month ago he had gone to a mining reception. He watched diligently the movie about cyanide. He found out that he is probably better off drinking water with cyanide. It would be cleaner than his drinking water in Missoula. His constituents voted 22,000 for I-137 and 11,000 against it and therefore he will vote with his constituents.

**SENATOR MCCARTHY** stated she wants to go on the record also since her district is most affected by any of this. She represents four counties, Deer Lodge which voted against it, Granite which overwhelmingly voted 2-1, Powell which voted for the ban and a percentage of Missoula which voted for the ban. Two to two, where does she go? She counts the votes and listens to the people in her district. They are trying desperately to clean up her area, this is legislation that needs to be done. It was not a fair election.

**SENATOR GROSFIELD** stated he would vote for the bill. People in his district are not persuaded by this particular sandbag campaign but he is voting for the bill not only because of how his people back home feel but because he thinks policy decisions on technical issues need to be made right here and not in the initiative ballot box. It is a tough vote and a tough issue. It goes way beyond cyanide. It goes to the basis of our feelings for representative government. He stands on the side that representative government is without question. We have what we should have and what we need to keep. He has no qualms about voting yes for all three of these bills.

**Vote:** Motion that **SB 344 DO PASS failed 5-6** by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, MILLER, ROUSH, TAYLOR AND WILSON VOTING NO.**

**Motion:** **SEN. GROSFIELD** moved **SB 344 DO NOT PASS.**

**Discussion:**

**SENATOR GROSFIELD** stated the reason for his motion is because there would be an adverse committee report if this motion passes. This would allow further discussion on this issue.

**SENATOR MILLER** stated he was opposed to an adverse committee report for the same reason he is opposed to an initiative process. He agreed with everyone's statements about initiatives. The job to hear all the information for these bills is still in the committee. That is where we hear the information and talk about it. There is no way there is adequate time, data and enough information on the floor of the Senate to deal with issues like this one. He will oppose the motion.

**SENATOR WILSON** asked for a point of clarification. He asked **SEN. GROSFIELD** to explain the mechanics of what happens with an adverse committee report and the procedure of the vote for those in the audience who may not quite understand the mechanics of that. **SEN. GROSFIELD** stated an adverse committee report is created anytime a committee passes a DO NOT PASS motion on any bill. That is on order of business #2 which is separate from the normal committee process. Next, the adverse committee report is briefly explained by the Chairman and the Senate votes up or down on the adverse committee report. If the report passes, the bill stays in committee and if it fails then a further motion would be in order to place the bill on second reading.

**SENATOR COCCHIARELLA** questioned if the Do Not Pass motion fails, can the vote be reversed on the Do Not Pass? **SEN. GROSFIELD** said if this motion passes then it goes out of this committee as a positive vote, if it fails then the bill is still in committee subject to whatever motion anyone would like to make, such as a table motion.

**Vote:** Motion **SB 344 DO NOT PASS** carried 6-5 by Roll Call Vote with **SENATORS MAHLUM, MILLER, ROUSH, TAYLOR AND WILSON VOTING NO.**

*{Tape : 2; Side : A; Approx. Time Counter : 10.8 - 42; Comments : None.}*

**EXECUTIVE ACTION ON SB 343**

**Motion/Vote:** **SEN. COLE** moved that **SB 343 DO PASS**. Motion failed 5-6 by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, MILLER, ROUSH, TAYLOR AND WILSON VOTING NO.**

**Motion:** SEN. MILLER moved that SB 343 BE TABLED.

**Substitute Motion/Vote:** SEN. GROSFIELD made a substitute motion SB 343 DO NOT PASS. Substitute motion failed 5-6 by Roll Call Vote with SENATORS MAHLUM, COCCHIARELLA, MILLER, ROUSH, TAYLOR AND WILSON VOTING NO.

**Motion/Vote:** SEN. MILLER moved that SB 343 BE TABLED. Motion carried 6-5 by Roll Call Vote with SENATORS CRISMORE, COLE, GROSFIELD, KEATING AND MCCARTHY VOTING NO.

**EXECUTIVE ACTION ON SB 345**

**Motion:** SEN. MCCARTHY moved that SB 345 DO PASS.

**Motion:** SEN. GROSFIELD moved that SB 345 AMENDMENTS SB034501.ALM DO PASS. EXHIBIT(nas39a12).

**Discussion:**

SENATOR GROSFIELD stated the amendments eliminate the effect of I-137 on Golden Sunlight Mine and mines in existence at the time of election. This amendment makes sure I-137 does not apply to any permitted mines that were in existence on November 3, 1998.

**Vote:** Motion that SB 345 AMENDMENTS SB034501.ALM DO PASS carried 9-2 by Roll Call Vote with SENATORS ROUSH AND TAYLOR VOTING NO.

**Motion:** SEN. COLE moved that SB 345 DO PASS AS AMENDED.

**Discussion:**

SENATOR MILLER stated this bill was quite different from the other bills, as it does not just talk about I-137 but policy. With this bill pollution policy is being set county by county. He feels that is a mistake and a bad road to go down. The Hanna Bill was a similar situation in the 80's and while that worked, it certainly set up a whole other set of problems for the upcoming legislators and even the community. He sees that happening here. He appreciates what SEN. SHEA is trying to do but he feels it is bad policy.

SENATOR WILSON stated he agreed with SEN. MILLER. SEN. SHEA is very honorable and serving her constituency very well. The problem he sees is we are going down a road where it is local option cyanide mining. Will that lead to local option minimum wage or local option prevailing wage? He is not certain where this ends. He feels a bad precedent is being set for government.

**SENATOR COLE** stated we keep talking about wanting to get government down as close we can to the people who are affected. This promotes that very thing. We are allowing the local governing body to adopt ordinances and people can vote on this. He would hope we would give the people a chance to decide whether they do or do not want to have cyanide leach operations.

**SENATOR TAYLOR** stated he had voted against the amendment. He does agree with the amendment for Golden Sunlight Mine. He does not think that was the intention of the voting people and he would hope **SEN. GROSFIELD** could find another place the amendment could be put if this bill does not pass.

**SENATOR MAHLUM** stated the problem he has with **SB 345** is his concern if mining does go into these other areas will some residual end up in Missoula. For some counties this may be very good but he has a problem where some of these things may wash down in the next county like they did 100 years ago with Mill Town Dam. He will be voting against the bill.

**SENATOR CRISMORE** stated he would be in favor of the bill and would not worry unless we start saying we are going to let Idaho tell us whether we can put in Rock Creek Mine or not.

**Vote:** Motion that **SB 345 DO PASS AS AMENDED failed 5-6** by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, MILLER, ROUSH, TAYLOR AND WILSON VOTING NO.**

**Motion/Vote:** **SEN. WILSON** moved that **SB 345 BE TABLED. Motion carried 6-5** by Roll Call Vote with **SENATORS CRISMORE, COLE, GROSFIELD, KEATING AND MCCARTHY VOTING NO.**

#### **EXECUTIVE ACTION ON SB 376**

**Motion:** **SEN. MCCARTHY** moved that **SB 376 DO PASS.**

**Motion:** **SEN. MCCARTHY** moved that **SB 376 AMENDMENTS SB037601.ATE DO PASS. EXHIBIT(nas39a13).**

#### **Discussion:**

**SENATOR MCCARTHY** presented the amendments. She has not covered all the concerns expressed but tried to cover the ones that were compatible to her thinking and the thinking of the people who asked her to bring the bill. This is only Phase I of the settlement, there is another \$225 million that is currently being

negotiated. She feels this is a jobs bill and she wants the jobs for Montana residents.

**SENATOR TAYLOR** stated his concern with the bill still lies in the preference treatment. He wants Montana companies but he referred again to the comment from Lois Menzies on February 10, 1999, where she said, "if we set up a preference system any business that does business out of the state is retaliated against." **SEN. McCARTHY** stated she appreciated that. When the vote was cast on **SEN. MOLE'S** bill on highways, which talked about the Canadian preference, she felt that also applied to the statement **SEN. TAYLOR** made. She took it to mean the same thing. **SEN. TAYLOR** said he understood **SEN. MOLE'S** bill to mean no one could bid in Montana without having the same equal treatment in Canada. In other words, it was not a preference exactly but that we had to have the same level playing field as opposed to if this bill is instituted. Our companies that go out of state are being set up for a change. **SEN. McCARTHY** stated Wyoming already has a preference in their law for Wyoming contractors. Her big concern is natural resource reclamation is not ordinary cleanup. It takes a different technique, a different education and it takes a different mentality to do this type of cleanup.

**SENATOR KEATING** stated there was another caveat that the contractor doing the work has to be within 150 miles of the action of the cleanup. It is one thing for an in-state bidder preference over a non-resident contractor, but to have an in-state preference based on miles so that one in-state company has an advantage over another in-state company he does not feel is right. **SEN. McCARTHY** stated the companies doing reclamation work in this area are located in this area. Most of the companies in Billings do not do natural resource cleanup. She was specific for a reason. Her area is the damaged area of the state and they want the work done right the first time. They do not want the money wasted.

**Substitute Motion/Vote:** **SEN. COCCHIARELLA** made a substitute motion that **SB 376 AMENDMENTS SB037601.ALM WITH #7 SEGREGATED DO PASS**. Substitute motion carried 10-0.

**Discussion:**

**SENATOR COCCHIARELLA** stated she agreed with **SEN. KEATING** on the restrictive language. There is a natural resource damage contractor in Billings. **SEN. McCARTHY** stated if they worked as a subcontractor and this does not preclude them from going back. **SEN. COCCHIARELLA** stated if there is another Billings entity or Sidney entity that has not worked in the area, she did not agree with precluding them from having this precedence over some other

out of state entity. She did not feel someone in Montana should be excluded no matter their location.

**Motion/Vote:** SEN. COCCHIARELLA moved that SB 376 AMENDMENTS SB037601.ATE INCLUDING #1-#7. DO PASS. Motion carried 9-1 by Roll Call Vote with SENATOR GROSFIELD VOTING NO.

**Motion:** SEN. MCCARTHY moved that SB 376 DO PASS AS AMENDED.

**Discussion:**

SENATOR TAYLOR stated he is quite worried about the competitive preference situation set up in this bill.

**Vote:** Motion that SB 376 DO PASS AS AMENDED carried 6-4 with SENATORS GROSFIELD, KEATING, MILLER AND TAYLOR VOTING NO.

*{Tape : 2; Side : B; Approx. Time Counter : 0.0 - 42; Comments : None.}*

**EXECUTIVE ACTION ON SB 265**

**Motion:** SEN. MILLER moved that SB 265 DO PASS.

**Motion:** SEN. MILLER moved that SB 265 AMENDMENTS SB026501.ALM DO PASS. EXHIBIT (nas39a14)

**Discussion:**

Larry Mitchell explained the amendments. Their purpose is to clarify that oil and gas is not included in this tax credit plan.

SENATOR MCCARTHY questioned amendment #42 and asked if Montana Tech did not accept the information then no deduction would be given. Larry Mitchell stated that was his understanding of the way it is written.

SENATOR TAYLOR stated this was an up to \$10 million tax credit against wages paid. How many \$10 million tax credits would be given? Mr. Simonich, DEQ, stated he did not really have a feel for this because he could not begin to determine how many operations this might apply to in the future.

SENATOR TAYLOR asked the sponsor about the credit. SENATOR GRIMES stated it is difficult to determine but he feels there will be a substantial amount of additional exploration activity

as a result of this bill. **SEN. TAYLOR** stated at this point they are not going to be able to allow cyanide mining and wondered if people would still opt to use this tax credit? **SEN. GRIMES** stated he could not say for sure but he felt this was a good message to send to out of state companies. This is potential revenue that is certainly not going to come in without this bill.

**SENATOR MILLER** asked if there was any way to attach the **SB 345** amendment of **SEN. GROSFIELD'S** to this bill? **Larry Mitchell** stated at first glance it would seem the title of this bill would not include that. **SEN. GROSFIELD** stated the codification instruction puts the whole thing into Title 15 which is the tax portion of the law. Nothing in that amendment deals with Title 62.

**SENATOR McCARTHY** asked if there was any way to get an accounting on this in two years to learn its effectiveness? **SEN. GRIMES** stated that would not be difficult as there were records that could be tracked for the information.

**Vote:** Motion that **SB 265 AMENDMENTS SB026501.ALM DO PASS CARRIED 11-0** by Roll Call Vote.

**Motion/Vote:** **SEN. MILLER** moved that **SB 265 DO PASS AS AMENDED. Motion carried 11-0** by voice vote.

**Discussion:**

**SENATOR GROSFIELD** commented this is a revenue bill and he would feel more comfortable if the tax committee reviewed this. **SEN. TAYLOR** agreed and suggested someone make a motion on the floor to send this to taxation. **SEN. KEATING** stated there was no revenue impact unless the party doing the exploration locates an ore body and commences mining and selling the ore. The only revenue impact it will have is if you get more revenue because someone has located a lode. **SEN. GROSFIELD** stated he agreed to a point but on page 6, Section 7, there are some options as to how this credit might be taken over a 15 year period. There may be a revenue impact. He does feel the bill is a good bill and it should pass.

**EXECUTIVE ACTION ON SB 468**

**Motion/Vote:** **SEN. COCCHIARELLA** moved that **SB 468 WITH AMENDMENT TO ADD STOCKWATER TO THE LIST OF EXCEPTIONS DO PASS. Motion carried 11-0.**

**Motion/Vote:** SEN. COCCHIARELLA moved that SB 468 DO PASS AS AMENDED. Motion carried 11-0.

**EXECUTIVE ACTION ON SB 344**

**Motion:** SEN. COLE moved SB 344 BE RECONSIDERED.

**Discussion:**

SENATOR GROSFIELD stated he would support the motion to reconsider and a subsequent motion to table the bill because SB 343 and SB 344 really need to be together. It would be hard to carry on with either one of them by themselves.

SENATOR WILSON questioned if the grand scheme was to nullify the adverse committee report. SEN. GROSFIELD stated that was correct.

**Vote:** Motion SB 344 BE RECONSIDERED carried 10-0.

**Motion/Vote:** SEN. COLE moved that SB 344 BE TABLED. Motion carried 9-1 with Keating voting no.

*{Tape : 3; Side : A; Approx. Time Counter : 0 - 22; Comments : None.}*

**ADJOURNMENT**

Adjournment: 6:30 P.M.

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SEN. WILLIAM CRISMORE, Chairman

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JYL SCHEEL, Secretary

WC/JS

**EXHIBIT (nas39aad)**